Provincial Court of British Columbia

REPORT OF THE 2001/2002

JUDICIARY PLANNING COMMITTEE

AND

THREE-YEAR STRATEGIC PLAN

2003 – 2005

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A. Introduction

The Provincial Court of British Columbia began a year-long internal strategic planning process in October 2001. The process commenced with the formation of the 2001/2002 Judiciary Planning Committee[1], which was assigned the mandate of developing a strategic plan for the Court.

The planning process involved extensive consultation with the members of the judiciary. That process is described in the next section. The end result of the initial phase is represented in this Report and Strategic Plan, which form a blueprint for change over the Court's next three years.

Feedback is invited. It is hoped that this report and plan will serve as a catalyst for discussion, and provoke suggestions of further ways to improve justice delivery at the Provincial Court level. As part of its next planning process the Court contemplates wider consultation among justice system participants and the public regarding certain areas of its justice delivery. Comments and suggestions may be provided to the Chief Judge at Suite 501 – 700 West Georgia Street, Vancouver, B.C., V7Y 1E8, or via e-mail at webmaster@provincialcourt.bc.ca.

This Court has a tradition of providing innovative solutions to challenges faced by it in the delivery of justice. It has developed programs to maintain and enhance the high quality of justice it provides, and has created numerous initiatives to improve public access to the Court. Examples of such court-initiated programs include the semi-annual presentation of high-quality continuing judicial education programs for judges and judicial justices, the introduction of mediation programs in small claims, family and child protection cases, and a wholesale revision of criminal process through the adoption of a case management system and province-wide judicial case management rules.

In keeping with this tradition, the Court undertook a province-wide strategic planning process, designed to identify further ways in which it might better serve the public. Early in the process, the following were identified as the Court's basic principles:

> As an independent judiciary, the Provincial Court of British Columbia is committed above all to upholding the Rule of Law and the Constitution of Canada.
>
> We aspire to be fair, impartial, compassionate and patient in a knowledgeable and consistent application of the law to all persons, with due regard to each person's circumstances.

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[1] The 2001/2002 committee members were: Chief Judge Carol Baird Ellan, Chair; Associate Chief Judges Ellen Burdett and Tony Spence; Judges Bagnall, Dollis, Gill, Krantz, Neal, Rodgers, Saunderson, Stansfield and Threlfall; Kathleen Morrison, Judicial Justice of the Peace; Mike Smith, Director of Judicial Administration. All committee members agreed to participate on the understanding that the activities of the committee would be conducted outside their scheduled sitting times.

> We strive in serving the communities of BC to provide reasonable and equal access to justice for all persons through traditional and innovative processes which, to the extent permitted by law and our resources, are practical, speedy, inexpensive, and simple.

These principles embody the values adhered to by the Provincial Court in fulfilling its statutory and constitutional mandate. They served as a touchstone throughout the planning process, and ultimately formed the foundation of the Committee's Report and the Court's Strategic Plan.

The Report is divided into six topics: Access to Justice, Quality of Justice, Jurisdiction and Divisions, Judicial Resource Allocation, Facilities/Technology/Security, and Governance. An overview of the topics is contained in the Executive Summary.

As the planning process unfolded, and the Court considered ways to enhance justice delivery, it was apparent that the current structure of court administration affects the Court's ability to achieve many of its goals. Under the current administrative structure, the Court is administered as part of the Ministry of the Attorney General. This limits judiciary control over judiciary staff, court services, and facilities. The Court's budget is allocated and considered as part of a package of resources assigned by the Legislature to the Attorney General's Ministry. Although the judiciary has, by law, a separate constitutional role as the third arm of government (together with the executive and legislative branches), it is in fact administered as part of the executive branch. These issues are discussed further in the chapter on Governance.

Efforts on the part of the Court to enhance (or maintain) access and improve (or maintain) the quality of its justice delivery are, therefore, necessarily assessed by government under the lens of departmental financial policies and interests. This issue of administrative structure, or governance of the Court, touches all other topics. Achievement of even modest reform goals is inexorably linked to issues of authority over all aspects of the Court's administration.

The evolving principles of judicial independence suggest that the administration of the Court should be separated structurally from that of the executive branch so as to avoid the inherent conflicts that arise under the current arrangements. Many courts in other common law jurisdictions are struggling with the same issues, in some cases resulting in substantial administrative reform. Such reform is a matter which the members of Court believe requires careful consideration and priority attention at this time.

The members of the Provincial Court judiciary are committed to providing justice to all British Columbians. The Court wants to structure mechanisms for decision-making and consultation with government, in order to continue its long-standing tradition of pursuing enhancements to access and improvements in the delivery of justice.

During the planning process, opportunities arose to make changes in areas where change was required, and a clear solution had been identified. Changes that have already occurred or are imminent are noted in inset text.

B. The Process

The Judiciary Planning Committee held a series of meetings over a six-month period and conducted a preliminary consultation with members of the judiciary and staff. It also organized meetings in various places throughout the province to seek suggestions for improvements in the delivery of justice.

Early in the process the Committee identified the six topics that are now incorporated into its Report. A subcommittee was assigned to develop each topic by consulting with members of the judiciary, researching the history of that topic, and identifying current issues and applicable initiatives.

Each subcommittee developed a set of materials for the purpose of briefing judges and judicial justices on its topic. These materials were sent out in advance of the spring judicial conferences. They served as the foundation for each subcommittee's conference presentation, and for discussion with conference participants on the issues relevant to that topic.

The initial six-month consultation phase culminated in May 2002 with separate conferences for judges and judicial justices of the peace. These conferences were designed as open forums for discussion of court reform, with mechanisms for recording the participants' views. The Planning Committee members collected, assembled and analyzed the conference feedback. A summary paper was circulated in the summer of 2002, for further comments from judges and judicial justices. In the fall, each subcommittee chair reviewed any further comments, and provided recommendations, which were incorporated into the Committee's Report and the Strategic Plan. A draft of this Report and Strategic Plan was circulated to the judiciary in late 2002 for approval.

Parts of the plan entail further consultation with justice system participants and the general public as reform proceeds. Other areas in which reform might arise are largely internal. Still others have existing vehicles or mechanisms for ongoing consultation[2]. As stated in the Introduction, the Court invites comment and feedback. All comments received will be considered in the context of the Court's ongoing planning process.

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[2] The creation in early 2002 of the Justice Review Task Force has afforded an additional mechanism for generating court reform and providing an opportunity for consultation with justice system participants. The Task Force consists of Chief Justice Donald Brenner of the B.C. Supreme Court, Chief Judge Carol Baird Ellan of the B.C. Provincial Court, Richard Margetts, Q.C., Past President of the Law Society of B.C., Peter Leask, Q.C. (for the Canadian Bar Association, BC Branch), Deputy Attorney General Gillian Wallace, Q.C., and Assistant Deputy Minister, Ministry of the Attorney General, Jerry McHale, Q.C. The objective of the Task Force is to identify a wide range of reform ideas and initiatives that may help to make the justice system more responsive, accessible and cost effective. The Task Force has produced its own compendium for potential justice system reforms, some of which are endorsed in this draft plan. The initiatives of the Task Force may be viewed at www.bcjusticereview.org.

C. Executive Summary

Through its internal consultative planning process, the Court identified many ways in which delivery of justice in the province might be enhanced. The Report of the Committee summarizes judiciary feedback, discusses the issues and problems identified under the relevant topic, and makes recommendations for action. The goals of the Court, derived from the Committee's recommendations, are set out collectively at the end of the Report, in the Strategic Plan. A brief overview by topic follows.

"Access to Justice" addresses the need to ensure that justice is in fact available to those who seek it, in keeping with the Court's stated principle of providing "reasonable and equal access to justice for all persons through traditional and innovative processes which, to the extent permitted by law and our resources, are practical, speedy, inexpensive, and simple." A need for improvement was identified in many areas, such as technological services, wheelchair accessibility, translation services, and availability of legal advice and public legal information. Many of these are dependent upon the availability of resources, or fall under the authority of other bodies. Given the current administrative structure of the Court, recommendations that relate to the adequacy of court services or facilities, or to community justice services, can be pursued only with government endorsement. The Court is hopeful that this Report will help to make preservation and enhancement of such programs a priority.

"Quality of Justice" encompasses an internal review of the processes and resources that assist the Court and its members substantively in their justice delivery. These include the appointment process, training for new judges, continuing education, the complaint process, and evaluation of judges and judicial justices. The planning process entailed an internal review of these topics. Identified goals include enhanced training and mentoring programs, expanded education opportunities, and exploration of a judicial evaluation program. Many of these are achievable with existing resources within the period covered by the strategic plan.

Responsibility for maintaining and improving the quality of judicial services is a function assigned by the *Provincial Court Act* to the Judicial Council of British Columbia.[3] It is important to note that there is in place a system of objective accountability in respect of the quality of judicial services, made up of the system of appellate court review[4], in relation to decisions of the court, and the system of complaints[5] and judicial inquiry as outlined in the *Provincial Court Act*, in relation to fitness for office. Judicial independence demands that judges be free of external influence in the fulfillment of their judicial duties. Traditionally, in the Canadian judicial system, that has meant that the substantive review of the quality of individual decisions is limited to that conducted under the appeal or complaint and inquiry processes.

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[3] http://www.provincialcourt.bc.ca/judicialcouncil/index.html.
[4] http://www.provincialcourt.bc.ca/yourexperienceatcourt/appeals.html.
[5] http://www.provincialcourt.bc.ca/yourexperienceatcourt/complaintprocess.html.

The topic, "Jurisdiction and Divisions," relates to the Court's statutory jurisdiction, and the way in which judicial duties are assigned by the Chief Judge to judges and judicial justices of the peace. The review focused on three subject areas: division of duties between judges and judicial justices, specialization, and court unification. Goals include development of an appropriate rationale for the division of duties as between judges and judicial justices, and continued exploration of the concepts of a unified family or single trial court. The issue of unified family courts is currently under consideration by the Justice Review Task Force.[6] The Court has provided an initial response on the topic[7], assisted in part by the availability of feedback obtained through the planning process.

"Judicial Resource Allocation" considers the effective utilization and allocation of judges and judicial justices, both on a daily basis and as vacancies arise. Management of judicial resources must be effective and efficient, while maintaining quality and accessibility. Accurate assessment of judicial resource requirements is therefore essential. Goals include development of a mathematical model for measuring judicial requirements, and more localized and consultative decision-making in respect of judicial assignments and case management.

"Facilities/Technology/Security" serves as a catch-all topic for physical plant and tools issues. With respect to facilities, the Court adopted a summary of basic standards recently identified by the Saskatchewan Judges' Association. This summary has been incorporated into the written standards for municipal circuit facilities. Goals include continued consultation with government in respect of facilities issues, and development of a formal process to update standards. The Court also explored available technological improvements, and endorsed the mandate of the existing Technology Committee as an advisory body and research vehicle. With respect to security issues, the Court considered the best mechanisms for their resolution, and adopted goals of delegating responsibility for some security issues, and centralizing others.

"Governance" deals with the way in which the Court is administered. It was divided into external governance, or the Court's relationship to government, and internal governance, which relates to administration within the judiciary. The Court considered whether the current model of external administration, through the Ministry of the Attorney General, allows the Court to achieve the best possible service to the public. The current absence of judicial control over personnel issues relating to judiciary staff and the lack of authority over court facilities, staffing, and other services caused concern. The commingling of the Court's financial interests with those of other Ministry departments may also pose obstacles to effective and independent judicial administration. The Court considered constitutional issues regarding the necessary degree of separation of the judiciary from the executive branch. Government cutbacks during the planning year highlighted these issues, and afforded opportunities for enhancement of administrative independence based upon what had been learned in the planning process, through development of agreements with the Ministry of Attorney General relating to facilities and budgeting.

In relation to the internal administration of the Court, considerable time was devoted to reviewing and revising the current structure, with a view to identifying improvements in efficiency and effectiveness. Goals include creation of judicial Executive and Management Committees,

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[6] See Footnote 2.

[7] http://www.provincialcourt.bc.ca/downloads/pdf/provincialcourtresponsetoJRTFpaperonUFC.pdf

delegation of tasks to the lowest appropriate level, and a review of the management and staff functions at the Office of the Chief Judge.

Exploration of enhanced administrative independence will be a priority for the term of the current Strategic Plan. Complementary goals include increased accountability and transparency in relation to the Court's administration. The Court has demonstrated accountability for existing areas of authority through responsible spending, a responsive and constructive approach to public complaints, and numerous court programs designed to enhance the quality and delivery of judicial services. Recent initiatives such as Annual Reports and media releases, an improved website, and an expanding list of public appearances by many members of the Court have helped to increase transparency. These efforts will continue and expand.

The development of this Strategic Plan is itself a step on the path to further accountability and transparency. It illustrates the Court's continued acceptance of the challenge of maintaining responsible and responsive justice delivery to the public of British Columbia.

D. Report of the 2001/2002 Judiciary Planning Committee

1. Access to Justice

The Committee considered this topic within the context of the Court's goal of providing "reasonable and equal access to justice for all persons through traditional and innovative processes which, to the extent permitted by law and our resources, are practical, speedy, inexpensive, and simple."

In considering access issues, the Committee identified the following basic principles:

> **The Rule of Law demands that all citizens have equal, and reasonable, access to justice.**
> **To the extent permitted by fidelity to the foundational principles of justice, the Court is committed to:**
>
> 1) **establishing and maintaining processes which are just, speedy, inexpensive and simple;**
> 2) **promoting public legal education**
>   a) **for persons involved in processes in the Court**
>   b) **to inform the public dialogue, and ultimately, the legislative process; and**
> 3) **ensuring processes and facilities are equally accessible to all persons.**

The Access topic encompassed many aspects relating to the need to ensure that justice is in fact available to those who seek it. The Committee focused on such disparate issues as wheelchair accessibility, translation services, and public legal information, and developed recommendations for improvement in many areas.

The Committee recognizes that suggested improvements in access must be subjected to scrutiny regarding their cost-effectiveness, and balanced with the other goals of the Court, and of government. Many of the Committee's recommendations are dependent upon availability of resources, or fall under the authority of other bodies. Given the current administrative structure, those that relate to the adequacy of court services or non-court justice services can only be pursued with government endorsement.

In 1988 the government of the day struck the Justice Reform Committee, chaired by The Honourable E.N. (Ted) Hughes. The Justice Reform Committee's stated purpose was: "to cause the justice system of the Province of British Columbia to be accessible, understandable, relevant and efficient to all those it seeks to serve."[8] That Committee stated: "The basic values underlying our justice system must be preserved and its historical roots respected. ...There must be access to the justice system, at an affordable cost."[9]

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[8] Terms of Reference, *Access to Justice*, The Report of the Justice Reform Committee, 1988
[9] Ibid. p.1

The Court has traditionally served a significant number of B.C. communities. As of December 2001, there were 99 different court locations. In January 2002, the government closed 24 courthouses as a cost-saving measure. Some of those have been reopened as circuit facilities. Court sitting locations currently number over 80.

Access is crucial in relation to much of what the Court does. A large proportion of the Court's work involves matters of an urgent or emergent nature with direct and profound impact on members of the community. These include child apprehensions, restraining orders, applications for peace bonds under section 810 of the Criminal Code, bail applications, domestic violence cases, and young offender matters. Such matters require accommodation within a tight or legislatively mandated time frame, so court and registry accessibility is of paramount importance.

In the open cabinet meeting on December 5, 2001, The Honourable Geoff Plant, Attorney General, spoke about the importance of access to justice:

> There's a range of things that we can ask of the justice system. ... I say that *justice must be accessible*. This speaks to the fact that we live in a diverse province with a diverse population and the need to make sure that all people have access to programs and services that the justice system provides.

At the May conferences, judges and judicial justices of the peace were asked to respond to survey questions respecting 5 broad topics relating to access to justice: access to facilities; extra-judicial resources; public relations and media relations; increasing public access – understandable process, and increasing public access – public legal education.

Judges and judicial justices had strong views on the importance of common issues, such as wheelchair access, sound amplification in the courtroom, increased video appearances, educational videos, brochures explaining the law (and in languages other than English), duty counsel, legal aid, family justice workers, Native Court Workers, law classes in secondary schools, backlog reduction, better access to interpreters, simplified court forms, electronic filing of notices of disputes for tickets and bylaws, judgment writing courses, plain language on the website, and a press officer or media spokesperson for the Office of the Chief Judge.

a. Physical Access and Facilities

The Court has a strong concern about physical access to courts, which has been significantly impaired in some locations by the recent court closures. There are grave concerns about the inadequacy of public transit and other means of getting to court, particularly in rural areas. There are areas of the province where there is no public transportation, and winter travel is hazardous.

While video appearances for witnesses and accused, and electronic filing or fax filing of various forms may ameliorate some access issues, they have not been quickly or broadly implemented. These kinds of initiatives are also not a panacea. For many remote locations, it is difficult to see how the significant access issues created by hazardous terrain, distances involved, and the absence of public transportation could be entirely addressed simply through the expansion of video or filing capabilities. Many matters, such as family case conferences and other types of

mediation, or sensitive or high-profile trials, require a Court presence in the community to be effective. Communities are entitled to see justice done within them.

In relation to facilities design and amenities, the Access subcommittee recommended the following: that the Court give priority to promoting improvements in sound amplification, both for persons who are hard of hearing, and in general; increasing video appearances for accused and for witnesses; improving placement of video screens, and considering changes to the traditional design of courtrooms.

The Access subcommittee noted that there was no effective mechanism for consultation between the Chief Judge and government regarding facilities issues. The Chief Judge had been represented on various committees dealing with courtroom design and equipment, and the Access subcommittee suggested that these issues be brought to the attention of those committees, with recommendations for action. There had also been a government standing committee on courtroom specifications, which has not met for some time, but might usefully be resurrected.

The subcommittee recognized that issues relating to public access are not traditionally under the authority of the judiciary. Decisions relating to facilities, including their design, structure and amenities are under the authority of the Court Services Branch of the Ministry of the Attorney General, and are naturally subject to Ministry budgetary pressures. The subcommittee noted that while input is sought from the judiciary on facilities issues relating to judicial administration, there have been logistical and institutional difficulties with levels of communication in this area.

During the planning process, an issue arose with government regarding the role of the Court in government decisions regarding the closure of courthouse facilities. The Planning Committee played an instrumental role in the development of written protocols between the Court and government defining a decision-making structure relating to courthouse closures, development of circuit courts, shared use of municipal facilities for circuit courts, and budgeting for matters affecting judicial administration.

The issue of adequacy of facilities was squarely addressed with the development of circuit courts to replace staffed facilities that had been closed, particularly where it was contemplated that facilities would be renovated or redesigned to be shared with municipalities. These concerns were addressed in the shared use agreement between the Court and the Ministry. The subcommittee recognized that there clearly is a continuing potential in these facilities for reduction in standards rather than enhancement, and recommended that the issue of access, as it relates to facilities, should be maintained as an agenda item in the appropriate forum with government.

b. Assistance to the Public

The Access subcommittee identified the following as priorities in relation to affording assistance to those who access the Court:

- timely delivery of justice
- better funding for the mentally ill
- more access to qualified interpreters
- more accessible legal advice prior to court proceedings

- universal duty counsel
- better funding of legal aid
- more family justice workers
- more law classes in secondary schools
- better access to Native Court Workers
- better availability of Parenting after Separation courses
- educational videos re court procedures
- more brochures explaining procedure and law
- more brochures in languages other than English

The Access subcommittee recommended that the Chief Judge:

- make appropriate governmental officials aware of the Court's concerns;
- encourage judges to record problems or delays arising from lack of assistance or advice to litigants, and report to the Chief Judge such concerns;
- collect the concerns received from judges, and report them to government; and
- disseminate the above information to the public.

The Court's concerns regarding many of these items to government have already been conveyed through the Justice Review Task Force[10], with input based upon conference feedback. Some of these items are included in that group's compendium of court reforms[11], which may provide a convenient catalyst for governmental or community response, where appropriate.

c. Understandable Process

The Court has made a commitment to simplified process in all its divisions, and has made significant improvements in this area in recent years. The Access subcommittee identified the following as continued priorities for the Court:

- Changes to Small Claims procedures
- Simplify court forms
- Plain language statutes
- Make Small Claims and other forms available electronically
- Fax filing & Electronic filing
- Develop short-form and long-form financial statements re Family Court

The subcommittee recommended that where these issues relate to matters under her authority, the Chief Judge should take direct action. They also suggested that there be continued dialogue between the Court and government regarding all the identified issues in this area, with a sustained effort to simplify access for parties. The subcommittee recommended that the existing Technology Committee continue in its role of advising the Chief Judge on specific issues and general developments in technology, so that she may represent the Court effectively in communications with government.

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[10] see footnote 2

[11] http://www.bcjusticereview.org/recent_announcements/2002/potential_reforms_07_02.pdf

The subcommittee also noted that website information and electronic filing cannot assist litigants without internet access, let alone those who cannot read. A majority of judges and judicial justices felt registry personnel should be better-trained, ready and willing to provide information to litigants. Most judges felt Court Services staff or other court personnel should provide information (but not legal advice) to litigants regarding court procedures such as ex parte interim orders.

These issues of public information are ones also identified by the Justice Review Task Force, and will be advanced by the Chief Judge or addressed in that forum as continued priorities, with this endorsement by the Court.

d. Public Relations

The Access subcommittee identified the following as priorities in relation to the Provincial Court Website:

- plain language on website
- information in languages other than English
- prompt posting of decisions on court website
- the transmission of information on the website to libraries, and other interested bodies
- judges should provide a "media summary" for posting with high profile decisions
- in appropriate cases, judges should provide a copy of their decisions, in court, to victims, the community, and the media
- judges should announce in the courtroom that their decision is available on the website

The subcommittee noted that what has been absent from the Court's website is supervision by a person responsible for website management and media relations, and proficient in legal issues.

The Court's website and judgment database were reorganized in early 2002, to make the website more user-friendly and easier to update for Office of the Chief Judge staff. At the same time, a protocol was developed for the posting of decisions, and a procedure for the timely addition of summaries of high interest decisions has been circulated.

With input from the planning process, the position of Legal Officer was reorganized to include these skills in the job description. These duties have now been assigned to a person at the Office of the Chief Judge, supervised by the Chief Judge.

The subcommittee recommended that the Chief Judge continue to encourage judges to forward decisions for posting, pursue enhanced plain language and the provision of media summaries for high-profile decisions, with a mechanism on the website for notifying media as to their availability.

e. Public Legal Education – The Role of Judges and Judicial Justices

The subcommittee cited the following priorities in this area:

- annual courthouse open houses
- on-going contact with news media
- media training for judiciary
- judgment writing courses
- public speaking

The subcommittee saw a need for a press officer/media spokesperson for the Office of the Chief Judge, and a process for "setting the record straight". As noted above, this task is now assigned to the Court's Legal Officer.

The provision of public legal education falls within the mandate of the Law Courts Education Society of B.C. [12] During the planning process and in response to feedback from the judiciary on these issues, the Chief Judge and members of the Planning Committee took steps to initiate a protocol with that Society, to increase judiciary involvement and assistance in its development of public legal education programs.

f. Jurisdiction

The current jurisdictional requirement that a litigant proceed in separate forums for different types of relief, coupled with the smaller number of Supreme Court sites in the province, may support exploration of a unified court for family matters. At the same time, criminal law is in the process of procedural reform which may question the justification for separate trial courts. These are matters that clearly affect the ease with which litigants may access, understand, and navigate the justice system, and which are worthy of serious consideration.

The question of jurisdiction as it relates to access to court is a problem that recent initiatives for unified or single trial courts attempt to address. The Court has already struck a committee to consider the issue of family court restructuring, and the topic of wholesale procedural reform may not be far behind. Issues relating to unified family court, single trial court, and restructuring are discussed further under the topic, "Jurisdiction and Divisions."

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[12] www.lawcourtsed.ca

2. Quality of Justice

This subject encompassed a collection of topics which were grouped together by the Committee as related to the quality of the Court's "justice": those processes and resources that assist judges and judicial justices of the peace ("judicial justices") substantively to deliver justice in the communities they serve. Those topics were: the appointment process, training for new judges and judicial justices, continuing education, the complaint process, and evaluation of judges and judicial justices. The planning process entailed an internal review of these topics.

Responsibility for maintaining and improving the quality of judicial services is a function assigned by the *Provincial Court Act* to the Judicial Council of British Columbia.[13] It is important to note that there is in place a system of objective accountability in respect of the quality of judicial services, made up of the system of appellate court review[14], in relation to decisions of the court, and the system of complaints[15] and judicial inquiry as outlined in the *Provincial Court Act*, in relation to fitness for office. Judicial independence demands that judges be free of external influence in the fulfillment of their judicial duties. Traditionally, in the Canadian judicial system, that has meant that the substantive review of the quality of individual decisions is limited to that conducted under the appeal or complaint and inquiry processes.

Judges' views in relation to the Quality of Justice and the subcommittee's recommendations based on the responses are summarized below. In general, judges supported the current appointment process, expressed a positive view of individualized training, and embraced the notion of a formal mentoring program, so long as it is not mandatory and is controlled by the bench. Judges also highly valued and wished to encourage increased educational opportunities.

The views of judicial justices tracked those of judges for the most part, except in relation to the appointment process. They felt that the Judicial Council should set criteria specific to judicial justices, and tailor the application, review and interview process to the position of judicial justice.

a. Appointment Process

In general judges were very supportive of the current application and appointment process[16], and were confident that it would preserve the tradition of reserving approval to only the highest calibre applicants. Judges agreed with the current structure of Judicial Council, as well as the veto system which governs Council's approval of a candidate. They did not endorse advertising vacancies. Respondents overwhelmingly supported Judicial Council advising Administrative Judges of the names of persons about to be interviewed by Council.

The practice of the Judicial Council has already been adjusted to apply the suggestion that Administrative Judges be canvassed regarding applicants.

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[13] http://www.provincialcourt.bc.ca/judicialcouncil/index.html.
[14] http://www.provincialcourt.bc.ca/yourexperienceatcourt/appeals.html.
[15] http://www.provincialcourt.bc.ca/yourexperienceatcourt/complaintprocess.html.

b. Training and Mentoring

In their responses, judges noted many resources that might be provided to a new judge to help prepare him or her for the reality of the work of judging: orientation sessions, handbooks, the opportunity to observe court proceedings for some time before actually sitting, travel to various regions to observe court and meet new colleagues, computer training and courses in effective delivery of judgments. An overarching theme was that training for new judges should be designed to address aspects of the Court's jurisdiction in which desired to gain more extensive experience. The subcommittee suggested the formation of a standard orientation program for each new judge, designed in consultation with the new judge. Judges also overwhelmingly supported the creation of a program which would allow new judges to form a relationship with a mentor. Responses of the judicial justices for the most part mirrored those of the judges.

As a result of the conference feedback, a mentor program has already been initiated. A training session was held in conjunction with the fall education conference.

c. Education

Part of the mandate of Judicial Council under section 22 of the *Provincial Court Act* is to improve the quality of judicial service. The functions of continuing education and organizing conferences have been wholly delegated to the Education Committees of the Provincial Court Judges' Association and the Judicial Justices' Association, with only indirect involvement by the Council. Judges and Judicial Justices have determined their own education programming and conducted semi-annual education conferences, with great success.

Judges supported the current practice of the Court, which is aimed at ensuring that all judges stay as up-to-date as possible. In respect of the need to provide more education or hard resources, judges were divided in response. The subcommittee identified the absence of a specific budget for education as an issue. It recommended maintaining the framework for delivery of education, and suggested consideration might be given to raising the annual number of mandatory education days to the federal standard of 10.

Given the otherwise complete delegation of responsibility for education to the Judges' and Judicial Justices' Associations, it may be that issues of library resources fall logically to the Associations. The subcommittee felt there should be a review of current and available library and resource materials, and an assessment of required financial resources. A review of the existing library resources has previously been suggested by the Library Committee. The role of the Library Committee is discussed under Internal Governance, below. To the extent that such a review found any potential savings in library resources, funds could perhaps be reallocated to enhanced education programming, or technological improvements for the education process.

The responsibility of informing the Chief Judge and the Court on topics relating to equality issues and social context has in recent years been assigned to the Chief Judge's Equality

[16] http://www.provincialcourt.bc.ca/judicialofficers/judgesofthecourt/appointmentprocess/index.html.

Committee. The role of standing committees in the governance of the Court is discussed in chapter 6. Issues relating to social context or equality tend to arise in disparate areas, such as the appointment process, judicial education, facilities, and procedural law. They accordingly fall under the responsibility of a variety of authorities. The Planning Committee reached a consensus that the important ongoing functions of the Equality Committee could best be achieved by the direct involvement of the Chief Judge, Judicial Council, the Education Committees, and other responsible entities. Discrete issues that arise in relation to equality matters may be dealt with as they arise directly by the responsible authority, or if not resolved, may be assigned to an ad hoc committee with a specific mandate. The Equality Committee will therefore not continue as a separate structure.

d. Judicial Evaluation

Judges were willing to consider an evaluation process. Slightly more than half of the respondents favoured a study of evaluation systems which might be useful to judges. A number of responses noted the overlap of this endeavour with the mentoring program. A pilot program offering Myers-Briggs assessments to a limited number of judges has been initiated for the spring of 2003, with Office of the Chief Judge support. The subcommittee recommended further exploration of this issue, following an assessment of the response to the mentoring and Myers-Briggs programs.

e. Complaints

The Chief Judge, and Associate Chief Judges through delegation, fulfill the function of screening complaints under section 11 of the *Provincial Court Act*. The authority in relation to complaints relates only to incidents of judicial misconduct, and does not encompass appeals or reviews of judicial decisions. The *Act* does not authorize interference with the exercise of judicial discretion, or provide the Chief Judge with authority to order a new hearing[17].

The remedies available for complaints or misconduct under the *Act* are very limited. Where it is determined that there is no need for an investigation or inquiry, the Chief Judge may only report in writing to a complainant and the judge or justice of the peace. Generally this takes the form of a letter explaining or acknowledging the behaviour, and perhaps extending an apology if appropriate. Corrective action may be taken only when an investigation is conducted. Investigations are limited to very serious situations, and rarely proceed unless it is likely there will be a need for an inquiry.

Complaint letters that do not raise fitness issues may highlight training or quality of justice issues, which could be addressed by remedial training of the individual or, for those of general application, incorporated into continuing education programs for judges or justices of the peace. Communication between the Office of the Chief Judge and the Education Committees respecting complaints might highlight potential education topics.

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[17] More information about complaints and appeals may be found on the Provincial Court website at http://www.provincialcourt.bc.ca/yourexperienceatcourt/complaintprocess.html

3. Jurisdiction and Divisions

The persons engaged in the delivery of judicial services under the *Provincial Court Act* consist of judges, judicial justices of the peace, judicial case managers, and justices of the peace. These judicial officers are assigned to duties by the Chief Judge, pursuant to section 11 of the *Act*, within the jurisdiction assigned to the Court by legislation. That jurisdiction, broadly speaking, includes criminal and quasi-criminal, family, child protection, small claims, traffic, and municipal by-law cases.

The assignments of all categories of justice of the peace have recently been subjected to considerable change. Changes arose in part as a response to case law relating to judicial independence, and in part from legislative reform. As a result, most substantive judicial duties performed by justices of the peace are performed by judicial justices sitting in traffic court or assigned to the 24-hour Justice Centre at 222 Main Street.

The topic of Jurisdiction and Divisions as considered by the subcommittee encompassed a review of the way in which the judicial duties assigned to the Court through its statutory jurisdiction are assigned by the Chief Judge to judges, and which judicial duties may be logically assigned to the Court's judicial justices of the peace.

The subcommittee's review of this topic focused on three subject areas: division of labour (as between judges and judicial justices, who does what and why), specialization, and court unification. Those topics were presented to judges and judicial justices (as applicable) at the May 2002 conferences by way of a series of questionnaires designed to elicit their views on the need for reform or improvement. The following is an overview of the judges' and judicial justices' views.

a. Division of Labour

Overall, both judges and judicial justices thought that duties should be assigned between them on the basis of their relative seriousness, degree of jeopardy, and legal complexity, as the most influential criteria. Public perceptions of the justice system and public access to justice also received considerable weight. The Court's administrative needs and the relative procedural complexity of various matters were afforded less significance.

These views are logical given the existence of two separate independent judicial officers under the *Provincial Court Act*, and indeed, are consistent with the justification for their separate existence. While judges have full jurisdiction and authority over matters assigned legislatively to judicial justices and/or provincial court judges, judicial justices have a narrower jurisdiction. They provide an alternate (but not exclusive) forum for less serious, less complicated and shorter matters, where volumes justify or timing facilitates their separation from a larger caseload. Given the lesser standards in terms of appointment criteria, including the absence of a requirement for a law degree, the office of judicial justice of the peace is naturally limited in jurisdiction to fact-driven assessments of minor disputes, and is naturally cost-effective. This two-tiered model accords with the Court's goals as set out above, and the public interest in maintaining a just, efficient, speedy and cost-effective Provincial Court system.

At both conferences there was a fair degree of consensus between the two groups as to who should do what. There was higher disparity in relation to more potentially custodial matters such as s. 810 peace bond hearings and in-court bail hearings. A strong majority of each group thought they should assume responsibility for those functions. There was also disagreement, although less pronounced, as to who should handle search warrants, which are currently assigned largely to judicial justices of the peace. Judicial justices were content with this assignment, but some of the judges believed that judges should take responsibility in that area. Both groups were attracted to having private mediators assume responsibility for small claims settlement conferences, but not for child protection and other family case conferences. In the absence of private mediators, they agreed that judges should handle the family matters, but each group felt it should conduct small claims mediation.

Since the commencement of the planning process, legislation has been passed by the provincial legislature, but not yet proclaimed in force, to reduce the jurisdiction of the judicial justices in respect of their conduct of traffic-related and other provincial ticket offences. The new legislation creates an abbreviated evidentiary process, with police officers filing written statements rather than giving *viva voce* evidence, unless the defendant serves notice and establishes that the officer should attend. Matters involving Charter issues will be streamed to judges. In addition, legislation relating to photo-radar was repealed in 2001.

Judicial justices of the peace will continue to sit in traffic court as they have done, but it is anticipated that as a result of these legislative changes, caseloads and case lengths may decrease. Corresponding increases in caseloads relating to after-hours bail and search warrants will put pressure on the Court to reallocate resources as between the sitting judicial justices and those who work 24-hour shifts in the Justice Centre. These pressures may reduce over time as more sitting justices assume shifts in the Centre, and as retirements in the sitting group are replaced by appointments into the 24-hour group.

The goal of the subcommittee was to identify an articulable rationale by which the Chief Judge should exercise the responsibility under section 11 of the *Act* to assign duties to these different groups, within the range of authority and jurisdiction conferred upon the Court from time to time by the Legislature and Parliament. This analysis should bear in mind upcoming and potential changes to jurisdiction, and should prescribe a mechanism for monitoring such changes and their effect on the assignment of duties to judges and judicial justices. The major pending changes are those contained in federal Bills C-15A and B, (now S.C. 2002, C-13) and those relating to traffic process described above. The major potential changes are an increase in the small claims jurisdiction of the Court, and court unification, both raised in the B.C. Justice Review Task Force Compendium Paper and discussion papers[18].

Considerable thought has already been given to a logical division of labour as between judges and judicial justices of the peace, by the Sitting Justice of the Peace Task Group. Some of the preliminary recommendations of the Task Force, whose report was delivered in March 2001[19], were reflected in the recent legislative amendments. The jurisdiction of judicial justices as a judicially independent office has also been the subject of several recent court decisions: *R. v.*

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[18] http://www.bcjusticereview.org

[19] http://www.provincialcourt.bc.ca/downloads/pdf/cjstaskgrouponsjps.pdf

Do[20]; *Reference re Sitting Justices of the Peace*[21]. Consequently, there is already some rationale behind the current assignment of duties, and level of process accorded them.

Thought could be given to whether there are other areas in which the higher volume, less complicated and shorter cases of the Court could logically be assigned to judicial justices, in keeping with the rationale for having a second tier of judicial office. For instance, small claims mediation, or perhaps motor vehicle liability cases, lend themselves as possible topics for exploration in this discussion. An increase in small claims jurisdiction, if pursued by the Justice Review Task Force, will provide incentive to free up judge resources for increases in caseloads, perhaps by expanding the duties of judicial justices.

b. Specialization

The consensus of judges on this question was that specialization currently has little relevance outside the urban locations. Most judges must perform all functions.

However, a significant majority of the judges (78%) counseled a "flexible" approach to the issue. Those who are in favour of specialization cite what they see as advantages of knowledge and expertise, and increases in speed and efficiency through familiarity with the subject area. Those who are opposed to specialization cite burnout and boredom, and lack of administrative flexibility, as the chief drawbacks. They also speak of a perceived loss of "broad perspective" for those who do not preside in all subject areas.

Responses from judges indicated that, in larger urban centres where case volumes warrant having divisions of judges concentrating on specific subject areas, specialization can be accommodated, but should not be required. There are very few judges of the Court who do not currently perform duties from time to time in each area of the Court's jurisdiction, but as with the changes to jurisdiction discussed above in relation to judicial justices, it must be recognized that there is at least a transitional training issue in having judges who have specialized for a great length of time, or always, undertake duties in a different subject matter.

For a court in which travelling is a part of the daily routine, versatility in judicial skills is clearly desirable. For the present, the issue of specialization appears not to be a pressing one for the Court but will become more relevant if the concepts of a unified family court or a single trial court, discussed below, gain more interest.

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[20] 2001 BCSC 1088
[21] 2000 BCSC 1470

c. Court Restructuring

i. Unified Family Court

There has been sporadic political and societal momentum towards establishment of unified family courts in Canada for a number of years. There is substantial support among the judges for the general concept of unification of family issues in one forum, with the apparent primary basis of that support being concern for access to the courts and service to the public.

These types of concerns have provided the impetus for unification of family courts in most other provinces, with mixed levels of success. There appears currently to be significant renewed political interest in the topic. At the spring planning conference, judges supported the initiative as a general proposition, while recognizing there have been considerable problems with the implementation of unified family courts in other provinces. There was a recurring theme that it would be essential to maintain provincial court-type simplified procedures, and province-wide access, in any unified court.

The subject of a B.C. Unified Family Court has been raised as a topic of discussion in the Justice Review Task Force, which produced a consultation and discussion paper[22]. The judges' preliminary views as expressed through the planning process were shared with the Task Force, and the Chief Judge struck a Unified Family Court Advisory Committee to consider the Task Force's proposal. The Advisory Committee consulted with the members of the Court, and made recommendations as to an initial response to the paper, which has now been delivered[23]. If the concept of a unified family court is pursued, the Court and the Advisory Committee will continue to participate in the consultation process.

ii. Single Trial Court

The percentage of judges favouring a unified criminal court is lower than that for family court, though still a majority (roughly 2/3 of respondents to the conference questionnaire). Whether or not in favour of a single criminal trial court, most judges question the utility of preliminary inquiries, and further believe that a single trial system makes sense.

The experience of judges can inform ongoing discussions of unified courts with the BC provincial government through the Justice Review Task Force, and at the federal level, through the Canadian Council of Chief Judges. While the single trial court concept is in an embryonic phase in this province, it has risen beyond that in other provinces, particularly Alberta, where there is discussion of a pilot project, supported by the Justice Minister. At its October meeting, the Canadian Council of Chief Judges passed a unanimous resolution in support of the concept

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[22] http://www.bcjusticereview.org/recent_announcements/2002/media_release_10_07_02.htm
[23] http://www.provincialcourt.bc.ca/downloads/pdf/provincialcourtresponsetoJRTFpaperonUFC.pdf

of a single trial court and the Alberta initiative. The Chief Judge will through that Council continue to explore the topic and to support the Alberta initiative.

Duplication of forums, overlaps in jurisdiction, and unwieldy processes are clearly not in the public interest, nor in keeping with the Court's goals. It is likely a matter of time before Canadian court structures are subjected to wholesale reform, in the interest of timely and efficient delivery of justice. The Court should continue to be supportive of such efforts, and as they approach fruition, turn its attention to how it might assist in designing their implementation.

In the meantime, the judges' general concern over the utility of preliminary inquiries is already being addressed by Parliament through S.C. 2002, C-13, even if not quickly enough, and only in half measure. Any implementation issues that arise in relation to that Bill and other criminal reform that occurs in the short run may be addressed by the Chief Judge's newly formed Criminal Procedures Committee.

Judges also favour an increase in small claims jurisdiction, though it is clear that civil procedures would need to be reviewed and likely revised, in order to accommodate larger and longer cases efficiently, and to maintain a streamlined process for less complicated, shorter ones. This topic has been discussed for several years. In 2001, the Judges' Association passed a resolution in favour of increased jurisdiction. As mentioned, increased jurisdiction is also included as a topic for exploration in the Justice Review Task Group's Compendium Paper.[24] It is likely that an increase will be considered in that forum in the near future, and the Chief Judge will continue to consult with the judges regarding civil process, perhaps through the vehicle of a committee.

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[24] http://www.bcjusticereview.org/recent_announcements/2002/potential_reforms_07_02.pdf

4. Judicial Resource Allocation

The issues in this area relate to the effective utilization and reallocation of resources, both on a daily basis and as vacancies arise, particularly with the advent of the senior judges program in mid-2001. The effective management of judicial resources is crucial to maintaining the goals of the Court, and must be responsive to the public's interest in achieving the effective administration of justice. Prevention of backlogs is dependent upon the Court's ability to both assess its judicial needs, and allocate its judicial resources appropriately to incoming caseloads.

Judge participants at the conference thought that all judges should be prepared to sit in all three divisions, and that assignments should be set equally among the bench, but recognized the need for flexibility. A majority of participants thought Administrative Judges should try and accommodate personal preferences if this does not compromise the administrative efficiency of the court, if the work distribution is fair to all judges, and if all of the judges in the district agree. They also felt that travel should be shared equally among all judges, with exemptions for medical reasons. A small number of judges thought that Administrative Judges should accommodate a judge's preference not to travel, so long as it did not impact negatively on other judges in the district.

In relation to the filling of vacancies, some judges thought that sitting judges should first be offered vacancies before a new appointment was sought, but an equal number thought not. The needs of the Court and the best candidate for the position were some of the factors the latter participants thought the Chief Judge should consider. Judges were divided in respect of how to prioritize between competing requests for transfers: some thought that judges with compelling personal reasons for transfer should be given priority; some thought that the first judge to apply to transfer to a particular location should be given priority; and some thought that the most senior judge to apply to transfer should be given priority. A majority thought that new judges who relocated to accept an appointment should be asked to make a commitment to stay in that location and not seek a transfer for a set number of years. The Committee also recognized that in remote locations where vacancies may be difficult to fill, the assurance of an eventual transfer might be an effective incentive for applicants.

At the time of the May conference, the Office of the Chief Judge had devised a mathematical means of measuring judicial resource requirements as between districts, based on caseloads and case lengths. This method was modified and a recalculation made for presentation in the July discussion paper, taking into account persistent regional disparities in case lengths. As pointed out to the judges, the assessment process is still in a developmental stage, but remains a priority. Judicial justices received a similar statistical analysis of resource requirements, which is still in the initial stages.

Meaningful assessment of judicial resource requirements is essential to effective utilization, and is a prerequisite to making a valid case for vacancy replacements and fostering accountability. Analysis of variations between districts may assist in explaining developing backlogs and in monitoring case management processes, in order that adjustments or reallocation can be made before vacancies or (now) partial vacancies are filled unnecessarily. While the overall monitoring function will continue to be carried out under the direction of the Chief Judge, deployment of resources is a district function. Hence local monitoring, assessment and accountability should be delegated to the Administrative Judges and their staff. This suggestion is discussed in more detail under Internal Governance.

Until recently the only available measure of "judicial efficiency" has been that of sitting hours, as recorded by court clerks and collected by the Court Services Branch. It is the Committee's view that the use of sitting hours to anticipate or assess judicial resource requirements is misleading, since they measure hours actually sat rather than those that must be set to accommodate a particular caseload. The difference between hours *set* and hours *sat* on a given day is essentially unpredictable. Hours lost through collapse may not be recaptured without overbooking, which itself often leads to further collapse. While the overall collapse rate may be reduced somewhat by effective case management, many of the reasons for cases not to proceed are beyond the reach of case management, and there will always be a core of cases set on a given trial date that do not require the hours reserved for them. Accordingly, sitting hours do not accurately reflect the number of judges or courtrooms required on a given day to address a given caseload, since it will not be known which of the cases set will not go ahead.

There must then be an assessment of the resources required to address that number of cases, *whether or not they proceed.* Those resources must be measured in terms of days required, as a function of case filings, since judges and staff are assigned by days to locations, and schedulers may not generally count on their availability (or that of staff) for the part days freed up when cases collapse. The use of sitting hours to measure utilization rates assumes that partial days may be recovered, but this is incorrect. What remains after all the shuffling of over-scheduled cases has occurred cannot be incorporated into available court time.

It may be that standardization of sitting days is not desirable, given the differences in interest levels relating to out-of-court judicial activities. Ultimately better consensus and consistency must be developed in relation to these activities, in the interests of both fairness and accountability. There is a wide range of non-sitting judicial activities that enhance both the quality of justice in the Court and the repute of the justice system. Thought should be given to development of a policy for approval of judges' participation in such activities, and for compensation to districts for the resulting loss of sitting days.

The topic of case management logically falls under Judicial Resource Allocation, since effective case management clearly affects the number of judges required for a particular caseload. That topic has received considerable scrutiny and attention in the criminal division of the Court over the past five years, since the publication of Chief Judge Metzger's 1998 Report on Backlog. A review of the criminal caseflow management process was conducted concurrently with the planning process, but separately, and the Criminal Procedures Committee mentioned above has been assigned the task of making recommendations for adjustment to criminal case management, as required. For this reason the topic was not considered directly in the planning process, but it will figure into the goals of the Court over the next three years.

Case management decisions clearly require a level of experience and expertise in the subject matter of the cases involved, and in relation to caseflow, knowledge of local practice. Broad policy decisions relating to case management will likely fall to the Criminal, Civil and Family Procedures Committees to consider. Decisions as to caseflow, best practices and approval of some non-sitting judicial activities may be delegated, as suggested below under Internal Governance, to Administrative Judges, along with responsibility for effective case and resource management.

5. Facilities, Technology and Security

a. Facilities

With respect to facilities, the following summary of basic standards recently identified by the Saskatchewan Judges' Association was presented for consideration by the judges and judicial justices at the conferences and in the discussion paper:

1. **The facilities must reflect the dignity, constitutional status and authority of the Court;**
2. **The facilities must provide security and protection to the Judiciary and Court staff so that they can perform their duties efficiently and without fear or compromise;**
3. **The facilities must reflect the separation of the Court from the Executive and Legislative branches of the government so that the perception of judicial independence is not jeopardized;**
4. **The facilities must maintain the physical separation of the judiciary from the other participants in the Court process so that the perception of judicial impartiality is not jeopardized. These participants include litigants, Court staff, lawyers, witnesses, the media and the public;**
5. **The facilities must accord a level of dignity and protection to all participants in the court process, that is consistent with the values of a just and democratic society.**

These principles have since been incorporated into the written standards for B.C. municipal circuit facilities, agreed upon by the Chief Judge and the Attorney General.

These principles provided a foundation for consideration of facilities issues by the Court at the conferences. Judges and judicial justices were asked to rank amenities such as security, computer access, judges' accommodations, privacy and other structural features of courthouses, in order of priority. There was surprisingly little variation among most features. The consensus appeared to be that where the above basic standards could be adhered to, they should be, but that other amenities were not priority items.

Judges and judicial justices recognized that in circuit courts or remote locations where sittings are infrequent there may be less technology and privacy, and lower standards for physical amenities, as a result of the current financial constraints upon government. However, the subcommittee recommended that there be no reduction in standards for courtroom security.

The subcommittee recommended in general that facilities receive higher priority, and that a standards committee be put in place to review and confirm basic standards for both future construction and existing facilities.

b. Technology

The Chief Judge struck a Technology Committee in October of 2001, with the mandate "to serve in an advisory capacity to the Chief Judge in respect of technological issues relating to the judiciary as they arise". Some members of that committee were also on the Planning Committee. After considering the pace of change in respect of technological issues, and the number of current matters in which a need for expertise in such matters arose, the Planning Committee recommended that the Technology Committee remain as an advisory/consultative body to the Chief Judge, Associate Chief Judges, Director of Administration, and Administrative Judges. The Technology Committee will continue to assess proposals, and make recommendations and advise the Chief Judge, in relation to the many current technological issues facing the Court, such as electronic filing and rota programs. It will also be involved in implementing many of the goals of the Court in respect of access to justice.

c. Security

The Chief Judge has traditionally had a standing Security Committee, with the mandate of resolving local security issues, and to make recommendations to the Chief Judge in relation to Court security matters of general concern. The Planning Committee and members of the judiciary agreed that issues of Court security should continue to receive considerable priority.

During the planning process, the members of the Security Committee were asked for their views regarding the best model for preserving the important function of monitoring court security. In their submission, the Security Committee members emphasized the importance of anticipating security issues, of planning properly in respect of them, and of having the benefit of persons with expertise and experience in those issues. They also noted the importance of maintaining a direct relationship with the Court Services Branch, Sheriff Services. The Security Committee members recognized that funding in relation to Sheriff Services and matters relating to security falls under the authority of the Court Services Branch, and that it is essential that there also be direct and regular communication between the Chief Judge and the Assistant Deputy Minister, Court Services Branch, in relation to generally applicable security issues.

The Planning Committee considered the issue of standing committees in the context of the Court's governance (see Chapter 6). In particular, it examined a common concern of standing committees that regular meeting schedules in the absence of an issue-driven mandate had committees casting about for ways in which to fulfill their role, advising on issues in a vacuum, and receiving inadequate attention from Chief Judges to their submissions. Further, committee-initiated recommendations often required action by bodies over which neither the committees nor the Chief Judge had advisory capacity, for instance, Judicial Council, the Judges' Association, and the Court Services Branch of the Ministry of Attorney General. The experience of the Security Committee was consistent with this.

The Planning Committee came to the conclusion that topic-specific committees such as the Security Committee would function best in an ad hoc role. Under this new model, a committee would serve as an advisor to the Chief Judge on discrete, time-limited issues, such as governmental proposals that may affect the Court, development of Court rules, or responding to legislative change. When such issues arise, the Chief Judge would call upon members of the judiciary with particular interest and expertise in the area, such as the Unified Family Court

Advisory Committee, discussed above. This type of model also represents a more efficient use of judicial resources.

The Planning Committee recommended that the issues dealt with by the Security Committee in the past, namely, local, site-specific security concerns and global or general security concerns be separated. Those relating to local issues should be raised with the Administrative Judge of the particular courthouse, who may take steps to solve the problem locally, or raise the issue with the Director of Judicial Administration. The issue may then be raised with the appropriate Associate Chief or directly with the Assistant Deputy Minister, Court Services Branch, for immediate resolution, or policy development. These issues, even if unresolved, would not benefit from further analysis or development of recommendations by a separate committee, though they could be taken to the committee of Administrative Judges for further consideration as to the appropriate action (see Management Committee under Internal Governance, below).

The Planning Committee recommended where global or general security issues raise specific questions regarding changes in security policy, they should be considered by an ad hoc committee struck for that purpose, if necessary, consisting of members of the judiciary with expertise and experience on the issue of security. (Interested former members of the Security Committee would be a logical starting point.) In matters where further inquiry or analysis is not called for, they may again be raised with the Administrative Judges for development of policy or an appropriate response.

Although, the Planning Committee reached the conclusion that it was not necessary to have a separate, standing Security Committee, it was of the view that the important mandate and ongoing functions of that committee should be preserved by continued representation on the Management Committee (see below) of the Director of Judicial Administration, a former member of the Security Committee, and perhaps by inviting a member of Sheriff Services to make quarterly reports to the Management Committee regarding issues or proposed changes in policy.

6. Governance

Governance deals with the way in which the Court is administered. It was divided into external governance, or the Court's relationship to government, and internal governance, which relates to administration within the judiciary. The Committee considered whether the current model of external administration of the Court, through the Ministry of the Attorney General, allows the Court to achieve the best possible service to the public. The current absence of judicial control over personnel issues relating to judiciary staff, the lack of authority over court facilities, staffing, and other services, and the commingling of the Court's financial interests with those of other Ministry departments may pose obstacles to effective and independent judicial administration. The Committee also considered constitutional issues regarding the necessary degree of separation of the judiciary from the executive branch. Outside events arising during the course of the planning year highlighted these issues.

The Committee has recommended that exploration of enhanced administrative independence be a priority for the term of the current strategic plan. The Committee also recognized that increased autonomy, if that is desirable, entails increased accountability. The Court has in recent years produced Annual Reports in an effort at increased accountability and transparency. It has increased its level of public consultation and communication through media releases, an improved website, and an expanding list of public appearances by the Chief Judge and many members of the Court. The Court has demonstrated accountability for existing areas of authority through responsible spending, a responsive and constructive approach to public complaints, and numerous court programs designed to enhance the quality and delivery of judicial services. The Committee recommended that these efforts continue and expand.

a. External Governance

External governance as examined by the Committee pertained to the respective roles of the Attorney General, Chief Judge and Chief Administrator of Court Services, as defined in the *Provincial Court Act*, in relation to the administration of the Court.

Section 41(1) of the *Provincial Court Act* states that the Attorney General is responsible for the provision, operation and maintenance of court facilities and services. Section 41(2) provides that, "subject to the direction of the Attorney General, and to the direction of the Chief Judge in matters of judicial administration, the chief administrator of court services [who is currently the Assistant Deputy Minister, Court Services Branch] must direct and supervise facilities, registries and administrative services for the court."

The assignment to the Chief Judge of "judicial administration" engages the concept of judicial administrative independence, a topic that has received some scrutiny in recent cases and literature. A study of this case law is required in order to interpret the roles assigned by the *Act*. What follows is a series of excerpts from cases in which the concept has been judicially considered.

In 1995, the Supreme Court of Canada case of *R. v. Valente*[25] established the following minimum essential requirements for the purposes of ensuring that a court had administrative independence:

> Judicial control over ...assignment of judges, sittings of the court, and court lists--as well as the related matters of allocation of court rooms and direction of the administrative staff engaged in carrying out these functions...
>
> ...judicial control over the administrative decisions that bear directly and immediately on the exercise of the judicial function.[26]

In *Valente*, Mr. Justice Le Dain suggested there were a number of other desirable elements of institutional independence, in order to ensure a sufficient separation of powers, and foreclose conflicts between the executive branch and the judicial branch of government. He referred to the following excerpt from a 1980 address by Chief Justice Laskin entitled, "Some Observations on Judicial Independence."

> Coming now to other elements which I regard as desirable supports for judicial independence, I count among them independence in budgeting and in expenditure of an approved budget, and independence in administration, covering not only the operation of the Courts but also the appointment and supervision of the supporting staff. Budget independence does not mean that Judges should be allowed to fix their own salaries; it means simply that the budget should not be part of any departmental budget but should be separately presented and dealt with. I do not, of course, preclude its presentation by a responsible Minister, but he should do this as a conduit, and yet as one able to support the budget after its preparation under the direction of the Chief Justice or Chief Judge and the chief administrative officer of the Court. So, too, should the Court, through its Chief Justice or Chief Judge and chief administrative officer, have supervision and direction of the staff of the Court and of the various supporting services such as the library and the Court's law reports[27].

In the Ontario Court of Appeal decision in *Valente*[28], Chief Justice Howland counselled that in order to preserve the requisite degree of separation, "the heads of the judiciary have to work closely with the representatives of the Executive unless the judiciary is given full responsibility for judicial administration."[29]

In the *Reference Re Remuneration of Provincial Court Judges*[30], then Chief Justice Lamer also recognized the principles of judicial independence and the separation of powers:

> As this Court has said before, there are three branches of government -- the legislature, the executive, and the judiciary ...Courts, in other words, are equally "definitional to the Canadian understanding of constitutionalism" ...as are political institutions. It follows that the ...constitutional imperative -- the preservation of the basic structure -- ...to limit the power of legislatures to affect the operation of political institutions, also extends protection to the judicial institutions of our constitutional system. By implication, the jurisdiction of the provinces over

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[25] 1985 S.C.J. No.77
[26] At paras. 49 & 52
[27] At para. 50
[28] (1983), 2 C.C.C. (3d) 417
[29] At p. 433
[30] [1997] S.C.J. No. 75

> "courts", as that term is used in s. 92(14) of the Constitution Act, 1867, contains within it an implied limitation that the independence of those courts cannot be undermined.[31]

He added later:

> These different components of the institutional financial security of the courts inhere, in my view, in a fundamental principle of the Canadian Constitution, the separation of powers. As I discussed above, the institutional independence of the courts is inextricably bound up with the separation of powers, because in order to guarantee that the courts can protect the Constitution, they must be protected by a set of objective guarantees against intrusions by the executive and legislative branches of government.
>
> ...What is at issue here is the character of the relationships between the legislature and the executive on the one hand, and the judiciary on the other. These relationships should be depoliticized...[32]

The issue of institutional administrative independence was considered more recently by Mr. Justice Gonthier in the Supreme Court of Canada, in the case of *Mackin v. New Brunswick (Minister of Justice)*[33] in the following terms:

> ...the independence of a particular court includes an individual dimension and an institutional dimension. ...the latter relates to the court to which the judge belongs and involves its independence from the executive and legislative branches of the government. ...institutional independence relates more to the status of the judiciary as an institution that is the guardian of the Constitution and thereby reflects a profound commitment to the constitutional theory of the separation of powers. Nevertheless, in each of its dimensions, independence is designed to prevent any undue interference in the judicial decision-making process, which must be based solely on the requirements of law and justice.
>
> Within these two dimensions will be found the three essential characteristics of judicial independence set out in Valente, supra, namely financial security, security of tenure and administrative independence. Together, these characteristics create the relationship of independence that must exist between a court and any other entity. Their maintenance also contributes to the general perception of the court's independence. Moreover, these three characteristics must also be seen to be protected. In short, the constitutional protection of judicial independence requires both the existence in fact of these essential characteristics and the maintenance of the perception that they exist. Thus, each of them must be institutionalized through appropriate legal mechanisms.
>
> ...the need to ensure that the process is depoliticized imposes negative and positive obligations on the legislative and executive branches because not only must they refrain from using their financial powers to influence judges in the performance of their duties, but they must also actively protect the independence of the judiciary by enacting appropriate legislative and institutional instruments.[34]

These authorities recommend the institutionalization of administrative independence of courts, so that there is both the reality and the perception of independence.

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[31] *Ibid*, para. 108
[32] Ibid, paras. 126, 138, & 140
[33] [2002] S.C.J. 13, at paras. 39 - 62
[34] *Ibid*, paras. 39 - 62

In B.C., as currently structured, financial and administrative authority in respect of Provincial Court resources is shared between the judiciary and the Ministry of the Attorney General. The Provincial Court judiciary budget is included as an item in the budget of the Ministry of Attorney General, which also includes the budgets for court services, provincial criminal prosecutions, and legal aid, among other things. Authority in respect of court staff (including court clerks and sheriffs who attend in court) falls under the authority of the Chief Court Administrator, i.e. Assistant Deputy Minister, Court Services Branch. Authority in respect of judiciary staff is shared between the judiciary and the Public Service Employee Relations Commission, since section 41(3) of the *Provincial Court Act* provides for their appointment "under the Public Service Act."

The events of 2002 in B.C. in relation to government cuts, particularly the decision to close 24 provincial courthouses, raised some timely questions regarding the administrative structure of the Court, in the midst of the Court's planning process. The closure decision was developed in the context of the new government's three-year plan to reduce spending, a plan that included the adoption of balanced budget legislation, which fixed three-year budget targets and established ministerial incentives and penalties for meeting them.

Questions arose on the part of both the executive and the judiciary as to the appropriate level of consultation regarding matters of expenditure in relation to judicial or court administration, where issues of budget secrecy and balanced budget legislation were also engaged. The judiciary sought to participate in a wider assessment of whether the court closures would hamper access to the Court, but the timing of the decision and structure of the process adopted by government precluded this. The Chief Judge subsequently produced a report on the effects of the closures[35], citing a lack of sufficient consultation in respect of the decision.

These developments, and knowledge gained through the planning process, provided the impetus for the Attorney General and the Chief Judge to sign a Protocol outlining their respective roles in decisions relating to court administration, and prescribing a process for consultation on budget and facilities decisions relating to the Court. At the same time, the parties also signed a Memorandum of Understanding relating to the courthouse closures and development of circuit courts.[36]

Most of the 24 courthouses were nonetheless closed by August 2002, pending arrangements with the affected municipalities whereby they would fund existing courthouses or provide alternate facilities, in order to maintain sittings of the court on a circuit basis. In September 2002, the Attorney and the Chief Judge also concluded a further agreement outlining the Ministry's obligations in facilities shared or owned by municipalities (who are not governed by section 41 of the Provincial Court Act). Of the 24 closed courthouses, almost half have now been reopened as circuit courts.

The Protocol, Memorandum of Understanding and Agreement relating to municipal facilities clarify the existing legislative relationship between the Attorney, the chief administrator of the Court and the Chief Judge, and recognize a role for the judiciary in future decisions regarding

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[35] Preliminary Assessment of Proposed Courthouse Closures, February 15, 2002 (www.provincialcourt.bc.ca/newsandreferences/newsreleases/index.html)

[36] Both of these documents may be found at www.provincialcourt.bc.ca/newsandreferences/newsreleases/index.html

budgeting and facilities. However, the Court's experience in this matter suggests the need for a review of the respective roles of those responsible for its administration, and raises questions as to whether the current structure provides an appropriate model for justice system decision-making. While courts ought not to be immune from financial measures initiated by government, there is a clear argument for shared decision-making between the judiciary and government respecting court-related budgets, including those relating to facilities and court services. There is also support in the case law and authorities for separation of the court-related budget and decision-making processes from those relating to other aspects of the justice ministry.

The issue of administrative independence was considered by the provincial and territorial chief judges at the April 2002 meeting of the Canadian Council of Chief Judges. Following that meeting, the Canadian Association of Provincial Court Judges commissioned the preparation of a paper on the issue of administrative independence, which is expected sometime in the spring of 2003. The Council of Chief Judges feels that administrative independence should be explored, in the public interest. It has arisen as a topic in various ways in several provinces over the past few years. It is also of interest to note that courts at similar levels or with similar jurisdiction in other countries have experienced significant increases in autonomy and separation from their affiliated justice ministries in recent years.[37]

Through the planning process, conducted in this timely and dynamic context, the judges and judicial justices reached consensus on some fundamental issues involving institutional independence. The clearest of those is the need for a separate judicial budget process. There is also an identifiable mandate to explore further separation of the decision-making function in relation to court issues, in order to guarantee judicial authority in respect of all matters of judicial administration, and to ensure that the Court plays a significant part in decisions that may affect its ability to fulfill its commitment to the above principles, including maintaining a reasonable level of access to justice.

The Chief Judge and Deputy Attorney General have recently entered into a Budget Protocol, which acknowledges a role for the Chief Judge in decisions relating not only to the budget for judicial administration, but to the budget for court services and facilities that may affect matters of judicial administration. This represents an important step toward a process for separate court administrative funding, and development of an optimal model for court administration.

b. Internal Governance

Internal governance pertains to the manner in which judicial administration is conducted by the Chief Judge and the others charged with the administration of judges, justices of the peace, and judicial resources of the Court.

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[37] See for instance, http://cadmos.carlbro.be/Library/Councils/Councils.html#_Toc459267097; and http://www.irlgov.ie/bills28/acts/1998/a898pdf; http://www.fedcourt.gov.au/; and http://minjust.nl:8080/c_actual/speeches/sp0032.htm.

Internal administration of the judiciary may be divided into three areas: financial administration, systems support, and judicial and staff resource management. The budget of the judiciary is as reflected in the Annual Reports of the Court, found at www.provincialcourt.bc.ca. It consists largely of non-discretionary items, like judicial and staff salaries.

Discretionary spending arises in respect of minor operational items such as business contracts, office equipment, and ad hoc judicial justices of the peace and judges, or surpluses arising from under-spending in allocated areas. For the most part, the judiciary budget as currently configured is constant, at least as it functions in relation to judicial complement. Systems support is achieved in-house, with a small staff of three persons assigned to installation and maintenance of all judiciary hardware and software, as well as technical support for all judicial officers, and responsibility for implementation and maintenance of computer programs such as JUSTIN and Rota.

Personnel functions relating to judges, justices of the peace, and judiciary staff are technically supervised by Office of the Chief Judge staff, but practically managed in the field by Administrative Judges. While the development of a system of assessing of judicial resources is discussed under Judicial Resource Allocation, the function of assigning judges and measuring sitting requirements is essentially a local one, given its relation to incoming caseloads, population, case management, and local practice.

i. Financial Administration

Under the supervision of the Director of Judicial Administration, staff at the Office of the Chief Judge administers expenditures from allocated budgetary items, notably travel expenses, and professional allowance. Salary and benefits are currently administered by the payroll department of the Ministry, though there may be plans on the part of government to privatize these services, in which case the Office of the Chief Judge may be advised to take them over. This would accord with the Committee's recommendation for increased administrative independence, although there is a governmental impetus for shared services in many areas related to technical and administrative support.

Budget submissions for the judiciary are prepared by the Director of Judicial Administration under the supervision of the Chief Judge, before being submitted in writing to the Attorney General for inclusion in the Ministry's budget estimates. As stated earlier, budget allocations relate primarily to judiciary salaries and benefits, travel expenses incidental to sittings and administration of the Court, and systems support. Few of these areas are significantly variable. The operations budget for matters other than these fairly static ones is approximately 6% of the overall judiciary budget.

Increases in autonomy or self-administration of the Court will necessarily result in further budget items being transferred to the judiciary budget, possibly necessitating increased support staff for fiscal administration. Before any significant increases in control over court-related fiscal matters are pursued, consideration should be given to whether changes in the current financial administration system of the judiciary are required. The Office of the Chief Judge could likely benefit in this respect from scrutiny by an outside systems analyst, or business management consultant.

ii. Systems Support

The organization and functionality of the Office of the Chief Judge Systems Department also deserves some attention. The department has developed largely on an ad hoc basis in response to expanding systems requirements of the judiciary. The removal in the last fiscal year of the judiciary's computer budget from the Chief Judge's budget has resulted in removal of Systems Department responsibility for provision of and some maintenance of computer equipment. The Systems Department has nonetheless been fully occupied in the past year refreshing all computing equipment, systems and software; installing a completely new rota system and re-designed website; and moving toward a judiciary province-wide domain.

This change in authority respecting computer equipment has made decision-making and scheduling of systems projects and tasks by the judiciary's Systems Department more difficult. The diminution of control over the computer budget may however create a hiatus in activity and afford an opportunity for a review of the Systems Department's organization and procedures, while the issue of budget authority is addressed. This review can be performed internally, but could also be contracted out to a private systems analyst.

Supervision of the systems staff currently falls under the authority of the Director of Judicial Administration. The Chief Judge's Technology Committee has some peripheral involvement in systems issues, and thought could be given to a larger role for that committee or perhaps for an Associate Chief Judge, in the supervision of systems support staff.

iii. Resource Management

Judiciary personnel may be divided into judges, judicial justices of the peace, judicial case managers, judicial administrative assistants, justices of the peace, and Office of the Chief Judge staff. The manner in which judicial resources are measured is discussed in Judicial Resource Allocation. Assignment of personnel by location is set out in the Court's Annual Report, which may be found at www.provincialcourt.bc.ca.

Physical assignment of judges, local judicial case managers and judicial administrative assistants has traditionally been assigned to Administrative Judges. The authority assigned to Administrative Judges extends to scheduling of judges and staff, and immediate disciplinary issues pertaining to staff, with some ill-defined involvement on the part of OCJ staff, largely in order to ensure compliance with the vagaries of the *Public Service Act*.

Administrative Judge authority has not traditionally extended to disciplinary issues relating to judges, other than those which may arise in connection with scheduling or incapacity issues. Administrative Judges have primary responsibility for appraisal of local judiciary staff. They maintain records of attendance for staff and judges, and serve as the initial level for approval of absences, though the Office of the Chief Judge supervises leave management. The authority of the Director of Judicial Administration in relation to these issues overlaps with the positions of Justice of the Peace Administrator (in relation to Judicial Justices), of Administrative Judicial Case Manager (in relation to Judicial Case Managers), and of Manager, Finance and Administration (in relation to Judicial Administrative Assistants). As a practical matter, many of these issues come directly to the Chief Judge or Associate Chief Judges. Additionally,

Administrative Judges who directly supervise staff members lack sufficient control, supervision and authority in relation to them.

iv. Office of the Chief Judge Personnel

The staff positions and job descriptions for personnel at the Office of the Chief Judge are set out on the website, at www.provincialcourt.bc.ca. Most of the job descriptions for Office of the Chief Judge staff have been in existence for some time, and could benefit from a review of their functionality and accuracy for current positions. The position of Director of Judicial Administration has been in a state of flux in recent years. Many of the duties previously overseen by the Director of Judicial Administration have over time been assumed by an Associate Chief Judge, in part in a deliberate attempt to assess which of them required judicial supervision and which were largely administrative. The result of this transition has been that many largely administrative duties are still under supervision by the Chief Judge or an Associate Chief, and could logically be delegated to administrative staff.

The role of the Director of Judicial Administration could be expanded as the Court pursues increased autonomy. The job description could in time encompass a broader or enhanced skill set and qualifications such as an MBA or similar business degree, a Law degree, and some business administrative experience, including experience in the justice system or government. Expanding the role and qualifications for this position will assist in achieving greater autonomy, contribute to accountability, and allow for better continuity between Chief Judges.

Some positions have already been the subject of scrutiny as a result of the planning process. The position of the Executive Assistant to the Chief Judge has been expanded beyond secretarial support to include substantive assistance with correspondence and communications, coordinating and composing Court reports under the supervision of the Legal Officer, compiling statistics for use in assessing Administrative Judges' adherence to performance standards, and some supervisory duties. Similarly, the position of judicial administrative assistant to the Associate Chief Judges has been expanded to that of executive assistant as well, likely taking over the administration of Judicial Council, as well as communications management and similar support services for the Associate Chief Judges.

The position of the Legal Officer has recently been revised to expand to a full-time position from the previous part-time one, and to add to the existing role of providing legal advice to the Chief Judge in relation to complaints and judicial administrative issues, duties relating to media relations, website management, and justice of the peace training.

v. Standing Committees

One of the other areas considered by the Committee under this topic was the role of the Chief Judge's standing committees in issues of governance. The existing standing committees are the Equality, Library, Security, and Technology Committees. As discussed above in relation to the

Security Committee[38], there has been a level of "disconnect" in recent years between the Chief Judge and these standing committees, perhaps in part due to a lack of continuity between Chiefs, and in part to ill-defined roles and mandates for the committees. With the commencement of the planning process, each of the standing committees was put on notice, to one degree or another, that their role would be reviewed under the plan.

These standing committees have found their roles obscure, and successive Chief Judges have found it difficult to implement their recommendations. The committees' mandates encompassed topics within the authority or responsibility of various groups, for instance, Judicial Council, the Judges' Association, and the Court Services Branch of the Ministry of Attorney General. Accordingly, issues have on occasion been raised by the committees in a bit of a vacuum, and some recommendations have required action by bodies with respect to which the committees had no advisory capacity or over which the Chief Judge had no authority. By the same token, the important functions of these committees of keeping the Chief Judge informed and advising regarding current issues within their mandate were thwarted by the infrequency of their meeting schedule and the absence of direct regular communication with the Chief Judge.

As the planning process evolved, and with the assistance of input from the committees themselves, the Planning Committee concluded that topic-specific committees like these would function best on an ad hoc basis, as advisors to the Chief Judge on discrete time-limited topics, such as governmental proposals that may affect the Court, development of Court rules, or responding to issues or legislative change. In this type of role a committee would not only allow a Chief Judge to draw on the expertise and experience among judges interested in the topic, but would ensure effective consultation on focused, relevant issues, pursuant to a defined set of criteria, and likely result in recommendations for action within the authority of the Court.

The Planning Committee therefore concluded that the important functions of the Equality, Library and Security Committees should be drawn directly into the governance structures of the Court, by assigning them to members of the Management and Executive Committees (see below). This will ensure that there is direct and regular communication with the Chief Judge, Associate Chief Judges and Administrative Judges regarding these important issues. Those that require action can thereby be directly addressed in a timely fashion. Continuity with the former committees on these general functions will be maintained through the existing overlaps in membership.

For specific issues that require scrutiny by members of the Court with expertise and experience in a particular area, a topic-specific ad hoc committee may be struck, as was done in the case of the Unified Family Court Advisory Committee, and indeed, the Planning Committee. The former members of the standing committees may provide a logical pool of expertise for issues like this, when they arise.

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[38] See Facilities/Technology/Security

vi. Conference Feedback

At the conference, the Governance subcommittee posed a series of questions relating to the internal administrative structure of the Court. Feedback resulted in the following areas of apparent consensus:

1. **Judges value the role played by Administrative Judges and perceive them to be the regional representatives of the Court.**
2. **Judges want input into the appointment of Administrative Judges.**
3. **Administrative judges should receive training.**
4. **Persons who wish to be involved in administration should be identified and trained.**
5. **Judicial justices generally felt there should be a single Administrative Judicial Justice, provided for in the Provincial Court Act, appointed through a consultative process, who either participated in the Administrative Judges' meetings or met with them as required, and who oversaw rota preparation and judicial administrative issues relating to judicial justices, as a direct liaison with the Chief in such matters, and as a complement to the role of the Director of Judicial Administration (much like an Administrative Judge but without a regional focus.)**
6. **Judges felt Associate Chief Judges should be appointed by the Chief Judge and have regional responsibilities.**
7. **There should be some objective criteria developed by the Chief Judge in appointing Administrative Judges, Administrative Judicial Justices, and Associate Chief Judges.**
8. **There should be more transparency in the appointment of the Chief Judge.**
9. **There should be more inducements for the Chief Judge, the Associate Chief Judges and the Administrative Judges.**
10. **A management committee structure would be useful.**
11. **There is no real consensus on the appointment of the Chief Judge. Many felt vetting by Judicial Council would be a good place to start.**

vii. Suggested New Governance Model

In the fall, the Governance subcommittee held a special meeting to consider the internal administrative structure of the Court, specifically the positions of Chief Judge, Associate Chief Judges, Administrative Judges, Director of Judicial Administration, and Legal Officer, in light of conference feedback and recent experience.

The session began with the recognition that the current structure could be improved. The Chief Judge had over 240 individuals reporting directly to her. A considerable portion of every day was devoted to tasks that could easily and more effectively be done by others.

The subcommittee had the Chief Judge and Associate Chief Judges list all their weekly commitments, those of the Director of Judicial Administration, and of the Legal Officer. The subcommittee reflected on what judges believed a Chief Judge should do, identified the applicable principles, and created a list of prioritized obligations. Finally, the subcommittee assigned the daily tasks currently being done by the Chief Judge and Associate Chief Judges to the lowest administrative level which could most effectively deal with the task. In doing so, the subcommittee tried to reflect the views of judges expressed at the spring conference; that judges valued the role of Administrative Judges and perceived them to be the regional representatives of the Court.

The subcommittee's observations and recommendations are noted below. These suggested changes were discussed with the Administrative Judges at their November meeting, and were then presented for further consideration and approval of the Court.

viii. Principles

1. **The Chief Judge has primary responsibility for all management and administrative decisions of the Court.**
2. **It is the Chief's prerogative to delegate or assign those responsibilities.**
3. **Tasks should be delegated to the lowest appropriate level.**
4. **With responsibility comes accountability. Each delegate of the Chief should be accountable for their areas of responsibility to the Chief through regular, written reports in a form and content specified by the Chief Judge.**
5. **All members of the Court should be advised of the Court's management structure, lines of reporting, and respective areas of responsibility.**
6. **Committees should be established only to undertake specific tasks at the direction of the Chief Judge and terminated when those tasks have been completed.**
7. **All Committee appointments should be term limited.**

ix. Role of the Chief Judge

The Chief Judge should be responsible for:

1. **Planning the strategic development of the Court; chairing Planning Committee.**
2. **Representing the interests of and maintaining contact with judicial officers by traveling to the various administrative districts; liaising with Associations, attending educational conferences, outreach, well-being, mentoring and ethical advice.**
3. **Representing the Court to the public including: public ceremonies, public speaking, select media commentary.**
4. **Representing the Court to government by direct liaison with the Attorney General and Deputy Attorney General and participation in Justice Review Task Force, Protocol meetings, Compensation Committees.**
5. **Representing the Court to the profession: CBA/Law Society/Visiting judiciary**
6. **Representing the Court nationally and to other courts: Canadian Council of Chief Judges meetings/Superior Courts liaison meetings.**
7. **Examination of complaints.**
8. **Judicial Council: Chair of meetings, applications, screening, interviewing and dealing with appointments.**
9. **Executive direction of judicial administration: meeting with Associate Chief Judges, Director of Judicial Administration and Legal Officer, reviewing and providing executive direction with respect to goal-setting & achievement, resource assessments and allocations.**
10. **Sitting in Court regularly, throughout the province.**

x. Management Structure

Many of the responsibilities carried out at the Office of the Chief Judge could be directly delegated to the Administrative Judges and Administrative Judicial Justices. These could include immediate responsibility for district travel budgets, administrative expenses, and leave management. Furthermore, a Management Committee comprised of that group, chaired by an Associate Chief Judge, could serve as a decision-making group for most administrative issues requiring direction.

Instead of phoning or e-mailing the Office of the Chief Judge with respect to administrative issues, Administrative Judges would either be authorized to make the decisions themselves on specified issues, or raise the matter with the Management Committee for discussion and decision. The committee could meet monthly by phone or video and quarterly in person. More urgent matters arising between meetings could be circulated by e-mail for discussion and a group decision.

This could be complemented by an Executive Committee comprised of the Associates and Chief Judge, chaired by the Chief Judge, that could set the overall policy for the Court on major issues, with input from the Management Committee. The Legal Officer, Director of Judicial Administration and Administrative Judicial Case Manager could serve as advisors to both the Management and Executive Committees.

xi. Associate Chief Judges

The functions and number of Associate Chief Judges was also reviewed in the planning process. There has not historically been any consistency in the number or function of Associate Chiefs. The *Provincial Court Act* provides that Associate Chiefs have, subject to the direction of the Chief Judge, the same powers and duties as the Chief Judge. There is a considerable volume of complaints, and these must be examined by the Chief Judge, according to the *Act*. There are also a number of other responsibilities that fall to the Chief Judge, and require that either the Chief Judge or an Associate Chief Judge attend to them, for instance, supervising and supporting the Administrative Judges and chairing their meetings, liaising with government, public engagements, assessing judicial resources, supervising and supporting judiciary staff, and attending to the well-being of judicial officers. The Committee concluded that a third Associate was desirable.

The following is a proposed allocation of Associates' responsibilities:

Associate Chief Judge – Policy & Procedure
- Primarily responsible for policy development
- Criminal, Civil & Family Procedure Committee chairs report to this Associate
- Oversee substantive and procedural matters relating to the work of the Court
- Secondary responsibility for examining complaints

Associate Chief Judge – Operations
- Chair of Management Committee
- Chair of Technology Committee

- Supervisory responsibility for judicial resource allocation, including assignment of ad hoc/part-time/unassigned judges and administrative liaison with judicial justices of the peace
- Primary contact for members of Management Committee

Associate Chief Judge – External
- Represents Court to government in administrative matters
- Coordinates judiciary input on legislation
- Primary contact for government officials dealing with Court other than Attorney and Deputy
- Assembles and circulates information on government plans/initiatives
- Implements administrative independence projects endorsed by the Executive Committee
- Some public relations and media responsibility

It is acknowledged that there would be some crossover as each Associate participates in the Executive and Management Committees on issues relevant to their mandate. The key, however, would be to ensure that duplication of effort and workload is reduced or eliminated wherever possible, and that issues are properly streamed to the appropriate person.

xii. Administrative Judges and Judicial Justices

The system of having Administrative Judges administer local staff issues has proven workable, and deserving of expansion. The assessment of resource requirements (see Chapter 4, Judicial Resource Allocation) and administration of local personnel is a function that logically falls to a local administrator. Historical efforts to impose administration models or authority from the Office of Chief Judge on local administration have understandably received a mixed reception. While personnel records are kept centrally at the Office of the Chief Judge and may be utilized for appraisal purposes, they should be used as a supplement to local assessment processes, and primary authority should rest with the Administrative Judge.

As suggested in the judicial responses at the May Conference, increased authority merits administrative training, and there should be a recruitment and training process for Administrative Judges. It also merits appropriate recognition of the value of administrative time. Time out of court for Administrative Judges and potential candidates for that position should be a given. Selection of Administrative Judges should be based on a fixed set of criteria, which must include aptitude, inclination, the views of local judges, and performance standards, assessed by means of a training and evaluation program. There should also be ongoing assessment of Administrative Judges' performance, in terms of sitting hours per district, backlogs, and effective management and utilization of staff resources.

One area that has not previously been considered is whether the current configuration of districts in the province is a rational one. It is based primarily on geography, which results in some districts being significantly larger or smaller than others, and the number of judges in each varies significantly. This results in variations in workloads for Administrative Judges.

This structure of training and accountability for Administrative Judges leads to the question of how to assess their performance. More regional autonomy reduces the need for regional supervision or representation by the Associate Chief Judges, none of whom can develop sufficient local knowledge (in any event) to effectively oversee local administrative issues. The most reasonable method for assessing local performance will likely be statistical assessment, using comparators such as caseloads, case lengths, backlogs, and sitting days and hours.

These types of measurements are readily available and have already been utilized on a preliminary basis for the purposes of judicial resource allocation and backlog assessment. These are matters that must remain within the purview of the Chief Judge rather than a Chief Administrative Officer. The Administrative Judicial Case Manager currently functions as an important resource and source of information and support to the Chief Judge as well as the Administrative Judges in respect of measurement and assessment of judicial resources and caseloads, backlog monitoring, and staff deployment. This position should logically continue with responsibility in this area. The duties of the Administrative Judicial Case Manager could be expanded to include increased reporting responsibility, and such areas as management information and development of a system of central judicial resource coordination.

During the planning process, the Chief Judge consulted with the judicial justices in relation to the appointment of an Administrative Judicial Justice. It was decided that as a transitional measure, two judicial justices would be appointed to share the position, which involves administering 35 judicial justices in two separate areas of assignment, traffic court and the Justice Centre.

Two Administrative Judicial Justices have been appointed, effective February 1, 2003, based in part upon input received during the planning process regarding the desirable governance structure for this group of judicial officers.

The specific sort of issues that are now, or could be delegated to Administrative Judges and Administrative Judicial Justices include:

- **rota preparation and supervision**
- **approval of leave issues: holiday, holiday bank, education, meetings & special requests**
- **full supervision of Judicial Case Managers and Judicial Administrative Assistants (eliminate reporting relationship to Office of the Chief Judge).**
- **travel claim approval**
- **signing authority for delegated office and travel budget (corporate budget at Office of the Chief Judge for items of priority to the Court as a whole such as meetings of approved committees, etc.)**
- **local liaison with CBA/Law Society/bar assn groups/ governments and interest groups, as appropriate**
- **judicial resource allocation at local level**
- **mentoring**
- **issues arising from the conduct of judicial officers at the local level (with concurrent obligation to report to the Chief Judge on unresolved issues)**
- **security issues**
- **facilities issues**
- **implementation of programs such as Criminal Caseflow Management**
- **Court Services Branch JP assistance**

xiii. The Director of Judicial Administration

The changes to this position that might be considered include:

- **Providing the Executive Committee and Management Committee with expanded information to measure accountability for resources**

- **Eliminating the technical reporting relationship for Judicial Case Managers and Judicial Administrative Assistants**
- **Giving higher priority to systems and technology issues through the Technology Committee, chaired by the Director, reporting through Associate Chief – Operations**
- **Reducing the need for Office of the Chief Judge approval of leave, travel, personnel and other special requests. These would instead be handled first by Administrative Judges, using the Director and staff as resources. Failing resolution, the issue could be referred to the Management Committee**
- **Support and resource to Management Committee for security issues**

The Director's role under this new model would shift slightly, therefore, from directly performing tasks to increased measurement and evaluation of defined accountability factors.

xiv. The Legal Officer

Under the model which has been developed, the Legal Officer would continue to report directly to the Chief Judge. It is the expectation of the Chief Judge that the Legal Officer will assume responsibility for the following:

- **Legal advice**
- **Complaint screening**
- **Supervision of web site/judgment database**
- **Supervise production of annual reports**
- **Oversee litigation issues**
- **Legislative review and advice to judicial officers**
- **Judicial Justice of the Peace and Justice of the Peace training**
- **National Judicial Institute contact**
- **Legal components of judiciary benefits and personnel issues**

xv. Priorities

The following items should receive priority attention under any governance structure:

- **an amendment to the *Provincial Court Act* deleting the requirement for the Attorney General to appoint staff under the Public Service Act**
- **a review of e-mail systems**
- **a comprehensive review of the Court's systems plan and services**
- **training for Administrative Judges on new areas of responsibility and adequate time out of court to meet their responsibilities**

E. Three-Year Strategic Plan

1. Access to Justice

- The Chief Judge will convey to the Ministry of Attorney General the Report of the Judiciary Planning Committee in respect of access to facilities;
- The Chief Judge will request revival or formation of a Facilities Standards Committee or other vehicle to address issues in respect of facilities, and will endeavour to ensure that the recommendations of the Committee are included in written standards;
- Responsibility for local facilities issues will be assigned to the Administrative Judges, with support from the Director of Judicial Administration; the Chief Judge will assume responsibility for priority issues or issues of general concern to the Court;
- The Chief Judge and the Court will continue to work toward achievement of, and press for prioritization of, enhanced resources and information for litigants, simplified process, plain language statutes, fax-filing and electronic filing;
- The Chief Judge will consider asking judges and judicial justices to record specific problems or delays arising from lack of assistance or advice to litigants, for a specified period of time, and to report them to the Administrative Judges or Judicial Justices;
- The Chief Judge will consider whether to provide such information to government on an ongoing basis and/or (if warranted) publish it in the form of a report on Access to Justice in Provincial Court;
- The Legal Officer will assume responsibility for supervising and revising the Court's website and judgment database; reviewing and revising the judgment database protocol and high-profile decision media policy; developing media strategies; providing first-line responses to media inquiries; and assisting the Chief Judge in media relations.

2. Quality of Justice

- The Chief Judge and the Judicial Council will review the recruitment and appointment process for judicial justices of the peace and devise criteria and a process specific to the requirements of that office;
- The Chief Judge will authorize a wholesale review of all library resources currently used by the Court, with a view to making recommendations to modernize and maximize resources, to be completed as soon as possible;

- **The Chief Judge will ask the Judicial Council to endorse an increase of non-sitting education days for judges to 10 per year;**

- **The Judges' and Judicial Justices' Associations will be asked to consult with judges and judicial justices regarding the development of a program for independent assessment and evaluation of judicial skills, and make a recommendation to the Chief Judge in respect of such a program and any required resources, including retaining an outside consultant;**

- **The Chief Judge will consult with Judicial Council and the Judges' and Judicial Justices' Education Committees regarding their respective roles in improving the quality of judicial services, and if necessary develop a protocol or memorandum of understanding;**

- **The Chief Judge will continue assisting with implementation and assessment of the mentor and self-evaluation programs as recommended by the Associations;**

- **The Chief Judge and Judicial Council will request feedback and recommendations regarding new judges' orientation, and take steps with the Administrative Judges and Administrative Judicial Justices to develop a standard program and implement suggested improvements;**

- **The Chief Judge will establish a program to accommodate judges or judicial justices who specialize and who wish to gain experience in other subject areas.**

3. Jurisdiction and Divisions

a. Division of Labour

- **The Chief Judge will consider whether to retain an independent consultant to review and consider the logical assignment of duties within the Court, including any outstanding transitional issues relating to bail and search warrant duties and any pending or potential changes to the jurisdiction of the Court, to consult with members of the Court, and to provide recommendations on a rationale for assignment of duties;**

- **The Chief Judge will consider the consultant's recommendations, and effect any desirable and necessary changes in assignments of duties, following appropriate consultation with judges and judicial justices;**

- **The Chief Judge, in consultation with the judges' and judicial justices' Education Committees, will take steps to implement appropriate training in respect of new duties assigned to judges and judicial justices.**

b. Specialization

- The Chief Judge will establish a program to accommodate judges or judicial justices who specialize and who wish to gain experience in other subject areas.

- The judges' Education Committee, in consultation with the Chief Judge, will be asked to promote and provide any necessary support for the production of a Family Court Procedure Manual, similar to those available for criminal and small claims procedure, for use as a tool by new judges and by judges who do not regularly sit in Family Court.

c. Court Restructuring

- If the proposal for a Unified Family Court moves ahead, the Chief Judge will call upon the Unified Family Court Advisory Committee to consider the proposal, make recommendations to the Chief Judge regarding implementation, and assist to develop criteria for a model that would best serve the needs of the public, guided by the stated interests and goals of the Court and its written response to the Task Force paper;

- The Chief Judge, the Provincial Court Criminal Procedures Committee, and the Legal Officer will monitor changes in criminal law as they affect jurisdiction and process of the Court, and will continue to make recommendations for change and formulate appropriate responses to proposed legislative or jurisdictional changes, including any judicial training requirements that arise;

- The judges and judicial justices will undergo training in relation to the provisions of the new Youth Criminal Justice Act, with the support of the Chief Judge, through the assistance of the judges trained as presenters;

- The Chief Judge will strike a Provincial Court Civil Procedures Committee, to consider revisions to small claims procedure, to design a streamlined process for less contentious or complicated cases with a view to preparing for increased jurisdiction, and to consider such other matters as assigned to it from time to time by the Chief Judge;

- The Chief Judge will endorse and continue the Court's demonstrated initiative in exploring, developing recommendations for, or taking steps to implement new methods for the delivery of justice, including community or special-purpose courts, like those in other provinces or jurisdictions, through assignments to members of the Criminal Procedures Committee, the Unified Family Court Advisory Committee, the Civil Procedures Committee, or others as appropriate;

- The Chief Judge will continue to support the efforts of the Canadian Council of Chief Judges and other provinces to advance the concept of a single trial court, and, as the concept gains ground, will strike a committee

to make recommendations regarding: an appropriate Court response, any required procedural and structural changes, and any training and implementation issues.

4. Judicial Resource Allocation

- The Chief Judge will continue to pursue development of standards for accurate measurement of judicial resources and appropriate allocation of judges and judicial justices to address caseloads and prevent backlogs;
- The Administrative Judges and Administrative Judicial Justices will develop and refine policies in relation to case management, scheduling, backlog prevention, and assignment of judges, in consultation with the Chief Judge, Director of Judicial Administration and Administrative Judicial Case Manager, as required;
- The Criminal Procedures Committee will consider general case management issues that arise from Associate Chief Judge Spence's Report, and will make recommendations regarding any required province-wide or legislative changes to the Chief Judge;
- The Administrative Judges and Administrative Judicial Justices will endeavour to develop a process to monitor district performance in terms of sitting days, non-sitting days, backlogs, judicial and non-judicial resources and expenditures, in consultation with the Chief Judge, Director of Judicial Administration and Administrative Judicial Case Manager, as required;
- The Administrative Judges and Administrative Judicial Justices will oversee any adjustments to the computer rota program necessary to achieve goals in this area, in consultation with the Chief Judge, Director of Judicial Administration and Administrative Judicial Case Manager, as required. The Chief Judge and Administrative Judges will oversee implementation and if appropriate, institutionalization, of the standards developed for measurement of judicial resources and monitoring of district performance, and of any province-wide changes recommended by the Criminal Procedures Committee;
- The Administrative Judges will oversee implementation of any policies developed in relation to district case management and scheduling.

5. Facilities/Technology/Security

- The Chief Judge will request revival or formation of a Facilities Standards Committee or other vehicle to address issues in respect of facilities, and will endeavour to ensure that the recommendations of the Committee are included in written standards;

- **The Chief Judge's Technology Committee will continue as a consultative/advisory body to the Chief Judge and Administrative Judges and Administrative Judicial Justices in relation to technology issues, providing expertise and advice when requested in relation to specific issues, providing recommendations for improvement in technology as it relates to judicial administration, and assisting to achieve the goals of the Court in relation to access;**

- **The responsibility for dealing with local security issues as they arise will be to the Administrative Judges and Director of Judicial Administration, and priority issues or issues of general concern to the Court will be dealt with by the Chief Judge.**

- **Specific security issues requiring expert analysis or recommendations will be assigned to an ad hoc committee with particular expertise and experience in matters relating to security, as the need arises;**

6. Governance

a. External Governance

- **The Chief Judge and Associate Chief Judges will be designated as the Executive Committee of the Court;**

- **The Chief Judge and the Executive Committee will continue to pursue a role for the Chief Judge and Director of Judicial Administration in the preparation and submission of Court Services Branch budgets as they relate to Provincial Court services, staffing and facilities, through a Protocol or otherwise;**

- **The Executive Committee and the Legal Officer will continue to pursue an increase in judiciary control over judiciary personnel and resources;**

- **The Executive Committee will continue to meet with Ministry officials pursuant to the existing court administration protocol, maintain participation in the Justice Review Task Force, and explore the topic of administrative independence as appropriate in those forums;**

- **The Executive Committee will continue to foster increased Court accountability and transparency by supervising production of Annual Reports of the Court; by authorizing responsible judiciary spending aimed at maintaining and enhancing high-quality judicial services; and by encouraging public consultation, media relations, an enhanced judgment database and website, and public appearances by members of the Court, with concomitant funding;**

- **The Executive Committee will develop a plan for the continued pursuit of administrative independence and take steps to implement it;**

- **The Chief Judge will recommend amendments to the *Provincial Court Act* enhancing the independence of the process for selection of the Chief Judge; setting the term of office for the Chief Judge; assigning to the Chief Judge authority for the selection of Associate Chief Judges and Administrative Judges; and such other amendments as may be required;**

- **The Executive Committee will continue to explore and promote the topic of increased administrative independence through the Canadian Council of Chief Judges;**

- **The Executive Committee will consider whether to retain an outside consultant or agency to assist in conducting public consultation, and in developing the next strategic plan for the Court;**

- **The Chief Judge and the Executive and Management Committees will review the Court's Strategic Plan and any input from the public consultation process, and develop a new Three-Year Strategic Plan.**

b. Internal Governance

- **The Administrative Judges will be designated the Management Committee, chaired by the Associate Chief Judge – Operations;**

- **The Chief Judge will take steps to restructure the assignment of duties to the Management Committee and the Associate Chief Judges as suggested in the Report of the Judiciary Planning Committee;**

- **The Executive and Management Committees will commence and develop a recruitment, training and assessment program for existing and future Administrative Judges, Administrative Judicial Justices, and Associate Chief Judges;**

- **The Management Committee will consider whether the current configuration of administrative districts needs revision;**

- **The Executive Committee will consider whether to retain a business or systems analyst to review the management, information, and technology systems of the Office of the Chief Judge, and will implement any required changes.**